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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 124.

WESLEY M. SMITH, APPELLANT,

vs.

WALTER T. APPLE, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

REPLY BRIEF AND ARGUMENT ON BEHALF OF APPELLANT.

A. SCOTT THOMPSON,
JOHN S. DEAN,
HARRY W. COLMERY,
Attorneys for Appellant.

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I.

Jurisdiction of the Court Below is the Sole Question to be Decided by This Court.

Counsel for appellee have not seen fit to discuss the jurisdictional question. We infer, therefore, that they do not seriously contend but that the court below was in error in holding that it had no jurisdiction under the provisions of section 265 of the Judicial Code to hear and determine the

case upon the merits. Upon that point we are content to submit this case upon the authorities cited in our original brief. Apparently conceding that the court below did have jurisdiction to hear and determine the case upon the merits, notwithstanding the provisions of Section 265 of the Judicial Code, counsel argue the case upon the theory that the amended petition below does not state facts sufficient to constitute a cause of action. Their theory would seem to be that, although the court below was in error in holding that it had no jurisdiction, nevertheless, this court will inquire into the merits of the case, and if it appears that the decision can be sustained upon some other ground the judgment dismissing the case below will be affirmed. We do not understand this to be the law. In appeals taken from the United States District Court to this court under the provisions of Section 238 of the Judicial Code, only the question of the jurisdiction of the court below will be considered.

> "The whole question is not open to us but only the question of jurisdiction."
>
> Mexican Central R. R. Co. *vs.* Eckman, 187 U. S., 429.

> "The Supreme Court is concerned only with the correction of the conclusion reached in the court below as to the question of jurisdiction."
>
> Chicago *vs.* Mills, 204 U. S., 321.

See also the following decisions to the same effect:

McLish *vs.* Roff, 141 U. S., 661.

Passavant *vs.* U. S., 148 U. S., 214.

American Sugar Refining Co. *vs.* New Orleans, 181 U. S., 277.

United States *vs.* Larkin, 208 U. S., 333.

Gilbert *vs.* David, 235 U. S., 561.
Southern Pacific R. R. Co., 228 U. S., 137.
United States *vs.* Congress Construction Co., 222 U. S., 149.
The Resolute, 168 U. S., 437.
Male *vs.* Atchison, etc., R. R. Co., 240 U. S., 97.

The court below held that it was prohibited by the provisions of section 265 of the Judicial Code from granting the relief prayed for in the amended complaint. In other words, the court held that it was prohibited from passing on the merits of the case on account of the provisions of a statute of the United States. This was a denial of its jurisdiction.

> "Jurisdiction is the power to adjudicate a case upon the merits and dispose of it as justice may require."
> *The Resolute*, 168 U. S., 437.
> United States *vs.* Congress Construction Co., 222 U. S., 199.

If the court below had sustained the motion to dismiss upon any other ground except lack of jurisdiction to grant the relief prayed for, the appellant might have amended the complaint so as to have stated additional facts to meet the views of the court below, but when the complaint was dismissed for want of jurisdiction to enjoin the appellee from enforcing the alleged judgment and decrees there was nothing left for the appellant to do except appeal to this court. If the decision had been based upon a finding by the court that the amended petition did not state facts sufficient to constitute a cause of action, this court would have had no jurisdiction to review the decision upon appeal, and the case could only

have been appealed to the United States Circuit Court of Appeals. On the other hand, as the case was decided solely on a question of jurisdiction (see order allowing appeal, Transcript, page 56), the Circuit Court of Appeals has no jurisdiction to review the decision. Moreover, the statute, granting the right of appeal in cases of this kind directly from the United States District Court to this court impliedly, at least, limits the inquiry in this court to the question of jurisdiction. The particular clause of the statute referred to reads as follows:

> "* * * in any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision."

II.

Denial of the Writ of Certiorari is Not Conclusive.

The granting of a writ of certiorari in any case may not be claimed as a matter of right, but is wholly discretionary with this court.

> "It is also the general rule as to the writ of certiorari when sought as between private parties and on the ground that the proceedings below are void, that it will be granted or denied in the sound discretion of the court and will be refused where there is a plain and adequate remedy by appeal or otherwise."
>
> *In re* Huguley Manufacturing Co., 184 U. S., 297.
>
> Prince *vs.* Tobin, 245 U. S., 18.

This court may have denied the writ of certiorari upon either of two grounds:

1. It may have held that, although the judgment was void, the applicant for the writ had a plain and adequate remedy by way of defense to any attempt that might be made by the appellee to enforce his void judgment; or

(2) This court may have refused the writ upon the theory that the judgment was not final.

It appears from the record that litigation in the Kansas court had not been concluded at the time the writ was applied for. The Supreme Court of that State had remanded the case to the District Court, with instructions to modify the judgment and to proceed with a final accounting and determination of the case. The additional judgment of $148,617.96 was rendered by the District Court of Cherokee County, Kansas, in a subsequent proceeding in the same case and after the application for the writ of certiorari had been denied. It has been repeatedly held by this court that it will not try cases piecemeal, and that no writ of certiorari will be granted until a final disposition of the case in the court below.

Missouri, etc., R. R. Co. *vs.* Olathe, 222 U. S., 185.

Louisiana Navigation Co. *vs.* Louisiana Oyster Commission, 226 U. S., 99.

Rio Grande Western R. R. Co. *vs.* ——, 239 U. S., 11.

Furthermore, no writ of certiorari was ever applied for in so far as the second judgment of $148,617.96 is concerned.

III.

Did the Amended Complaint in the Court Below State Equitable Grounds for the Granting of an Injunction?

Since the court below did not pass on this question nor consider the amended complaint with reference to its sufficiency as constituting a cause of action, we do not think this court will consider that question on this appeal. However, we call the court's attention to the following allegations of the amended petition as showing conclusively that an equitable cause of action was stated in the amended complaint:

(1) All the allegations of the amended bill showing that the judgments of the Kansas court were void as being attempts by that court to adjudicate title to land and immovable property in another State.

(2) It appears that the alleged judgment of $148,617.96 was rendered by the Kansas court upon the report of a referee who had been instructed by that court to proceed

> "to take an accounting of and report to the court the amount of royalties received by the respective parties, plaintiff and defendant, since the items accounted for to the referee on the former accounting, and the said referee is hereby directed to report his findings of fact and conclusions of law in reference thereto at the opening of the September, 1920, term of the court, and said referee to give due notice *to the respective parties or their attorneys of the time and place of taking said further accounting*" (Transcript, page 32).

But it is alleged in said amended complaint

> "that afterwards in the absence of this complainant and without his knowledge the said referee proceeded *ex parte* to take such an accounting and report his findings to the said District Court of Cherokee County, Kansas, and afterwards still proceeding *ex parte* and without any knowledge or notice to this complainant the said District Court of Cherokee County, Kansas, entered a judgment against this complainant in accordance with the findings and conclusions of said referee" (Transcript, pages 15 and 16).

(3) It further appears from the allegations of said amended complaint that since the adjudications of the Kansas court some of the most valuable of the leasehold estates located in the State of Oklahoma which were the basis of the accounting and judgments against the appellant by the Kansas court have been brought into litigation by claimants in the State of Oklahoma and that the title to one, at least, of the most valuable leases has been canceled by a Federal court having jurisdiction, and that a suit is pending in the Oklahoma courts against the appellant for $455,000, alleged to be the profits derived from said leasehold estate by him. This means that the same leasehold estate which the Kansas court held to be the property of the alleged partnership of appellant Smith and which formed in a large part the basis for the accounting and judgments against the appellant in the Kansas court has been declared void and the appellant required to account to a third party for the proceeds of all minerals taken therefrom. In other words, the United States courts for Oklahoma having jurisdiction have

held that neither the appellant nor claimant had any title to a valuable leasehold estate which entered into the Kansas litigation, and that the appellant must account to a third party for all minerals taken therefrom. The allegations of the amended complaint further show that other valuable leasehold estates located in the State of Oklahoma and which the Kansas court adjudged to belong to the firm of Apple & Smith are likewise involved in litigation brought by claimants in Oklahoma, which, if successful, would subject the complainant to further accounting to Oklahoma claimants not parties to the Kansas litigation for the rents, profits, and issues received by the complainant from such leasehold estate. There is no question about the jurisdiction of the Federal and State courts in Oklahoma over these suits. If decided adversely to the appellant, he will be compelled to account to other claimants for the very same property, royalties, minerals, rents, and profits adjudged against him and in favor of the appellee by the Kansas court. It seems too plain for argument that, in view of these allegations, no court could have held that the amended complaint filed in the court below did not state facts sufficient to constitute a case for equitable relief.

IV.

Were the Judgments and Decrees Rendered by the Kansas Court and Which the Appellant Sought to Enjoin the Appellee from Enforcing Void?

We do not think this court will enter into a consideration of the question above stated, but, out of an abundance of

caution, we have prepared a brief upon this question which is attached herewith as Appendix A.

For the reasons stated, we respectfully submit that the decision of the court below should be reversed.

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HARRY W. COLMERY,
Attorneys for Appellant.

APPENDIX A.

Statement of Facts Relating to the Validity of the Kansas Judgments and Decrees.

The original suit in Cherokee County, Kansas, was brought by the appellee, W. T. Apple, against Wesley M. Smith the appellant (a copy of the petition in said suit will be found in the transcript at pages 21 to 26, both inclusive).

The petition alleged a "*joint arrangement, enterprise and joint venture,*" between the parties to the suit, "to take mining leases upon the lands belonging to the Quapaw Indians and divers persons located in Ottawa County, Oklahoma, and elsewhere, and for the purpose of taking mining leases in Cherokee County, Kansas, from divers persons, and for taking leases in both of said states for the purpose of agriculture, hay and other business for such time and upon such terms as could be best obtained for the purpose of prosecuting, mining, subleasing and developing the same."

The answer was a specific denial of the alleged "joint arrangement" or partnership and of any ownership by Apple of any interest in the leasehold estates described in the petition (Tr., 7), and the jurisdiction of the court to inquire into or determine the title to the mining leases owned and developed by the said Smith in the State of Oklahoma was challenged (Tr., p. 7).

The District Court of Cherokee County, Kansas, at the conclusion of the first hearing in the case adjudged that the plaintiff, Walter T. Apple (appellee herein) was a one-half owner in the estate vested in the said Smith by virtue of the leases held by him (Smith) on certain mineral lands in Ottawa County, Oklahoma, and upon the coming in of the referee's report, containing a *partial* accounting only, rendered a judgment against the said Smith for $55,042.03½, the same being the balance found against Smith upon the

partial accounting, and which did not take into the account any outstanding claims of creditors, nor any adverse claims to the alleged partnership property itself, and further decreed "that a receiver be appointed to collect the royalties accruing from said leases and sell said leases, and that for such purpose plaintiff and defendant are each to assign to said receiver such leases, so that the same may be sold by said receiver, and that the money arising from such sale be divided equally between the plaintiff and defendant, etc." (Tr., pp. 27 to 29).

At this point in the proceedings the case was appealed to the Supreme Court of Kansas, where it was modified and remanded to the District Court of Cherokee County, Kansas, with directions to change its former order directing the appellant to convey the Oklahoma leasehold estates to a receiver, so that the decree would require the appellant to convey the same to the firm of Apple & Smith. Such conveyance, however, was never made. Thereupon the lower court again referred the case to a referee

> "to take an accounting of and report to the court the amount of royalties received by the respective parties, plaintiff and defendant since the items accounted for on the former accounting."

Upon this second accounting an "additional" judgment was rendered against the appellant in the sum of $148,617.96, the same being for the royalties received after the former accounting and *one-half of the value of the Oklahoma leasehold estates.*

These judgments and decrees were based exclusively upon accounting of the rents alleged to have been received by Smith from the leasehold estates owned by him in Ottawa County, State of Oklahoma and the value of said estates (Tr., p. 8).

It further appears from the record that in June, 1920 (after the appellee had set up a claim to a one-half interest

in the said leasehold estates), two suits were brought in the District Court of Ottawa County, State of Oklahoma, to quiet the title to said leases as against the said W. T. Apple.

One of these suits was brought in the name of Wesley M. Smith and involved certain of the leasehold estates claimed by the said Smith to be his exclusive property, and the other was brought in the name of said Smith and one Pottorff who, with the said Smith, claimed the ownership to certain of the other leasehold estates involved in this litigation and situated in said county of Ottawa, State of Oklahoma.

The appellee, W. T. Apple, was personally served with summons in each of these cases and personally appeared, filing an answer in each suit. Each of these suits went to final judgment in the District Court of Ottawa County, Oklahoma, and in each of the cases it was finally held and determined by the court that the said W. T. Apple "*did not have, and never had, any interest whatever in any part of the leasehold estates*" (Tr., pp. 12 to 15, both incl.).

It further appears from the record in this case that at the time of the commencement of the original suit of Apple *vs.* Smith in the District Court of Cherokee County, Kansas, there was pending in the United States courts for the eastern district of Oklahoma certain suits by the Indian owners of the fee-simple title to the lands covered by the leasehold estates in Ottawa County, Oklahoma, involved in that litigation, which involved the validity of Smith's title and interest in and to the most valuable leases involved in the Kansas litigation, and which leases *produced all the revenue* out of which the accounting was had against Smith and the basis for the money judgments against him. One of these cases (W. P. McCullough *et al. vs.* Wesley M. Smith) is reported in 243 Fed., 823 (Tr., pp. 16 and 17).

It further appears from the record that various suits were at the time or have since been begun by various Oklahoma claimants and are now pending against the said Wesley M. Smith in the State courts of Oklahoma and in the Federal

courts for the eastern district of Oklahoma, in which said suits the validity of the leasehold estates in Ottawa County, Oklahoma, are brought into question by sundry citizens of Oklahoma. These suits likewise demand an accounting for all minerals taken by Smith from said leasehold estates and involve the identical leasehold estates and minerals taken therefrom which were adjudged in the Kansas court to be the joint property of W. T. Apple and Wesley M. Smith and which formed the basis for the accounting, judgment, and decree rendered against Smith in favor of Apple in the Kansas litigation. A full statement of the facts in regard to these suits appears in the record at pages 17 and 18, both inclusive.

ARGUMENT.

This case was decided by the court below upon a motion to dismiss filed by the appellee, who was the defendant below. In the consideration of such a motion the allegations of the amended complaint must be taken as true.

The amended complaint alleged as grounds for the relief prayed for that the judgments and decrees of the Kansas court were void, and all of the facts which rendered them void were stated therein, as well as many other facts occurring subsequently to the rendition of said judgments and decrees, which made it inequitable and unconscionable to enforce them.

The question, therefore, to challenge the consideration of this court in this connection is:

I.

Were the Judgments and Decrees of the District Court of Cherokee County, Kansas, in the Case of Apple vs. Smith Void?

That these judgments were and are void is demonstrated by a consideration of the following propositions:

1. *The Subject-matter of the Action.*

It appears from the allegations of the amended complaint that the judgments and decrees were based exclusively upon an accounting of proceeds derived from the enjoyment of certain leasehold estates standing in the name of Wesley M. Smith, one of the parties to the suit, located in the State of Oklahoma and claimed by Smith as his individual property (Tr., p. 7, fifth paragraph).

That leasehold estates, such as those involved in this case, especially after the same have been developed and mineral is being removed, as is the case here, are land and constitute immovable property is not left in doubt.

The Kansas Supreme Court in its opinion filed in the original case said:

> "The rights of the parties were determined, including their partnership right in land and mining leases of land situate in this and another State (Tr., 42, beginning at middle of line 13).

As a matter of history relating to the lands in controversy, the lands are Indian lands and the mining leases are executed by authority of the Act of June 7, 1897.

30 U. S. Stat., 72.

This act was construed in the case of the United States *vs.* Noble, 237 U. S., 74.

The lands were allotted to the Indians under Act of March 2, 1895.

28 U. S. Stat., 876, 907.

The lands were patented to the Indians with restrictions against alienation and, except for the leasing act above mentioned, a mining lease would be an alienation.

In the case of United States *vs.* Noble, 237 U. S., 74, the court in the opinion, at page 80, has this to say:

> "Under his patent, the allottee took an estate in fee, subject to the limitation that the land should be inalienable for the period of twenty-five years from date. This restriction bound the land for the time stated, whether in the hands of the allottee or his heirs. Bowling *v.* United States, *supra.* It put it beyond the power of him or of them, to alienate the land, or any interest therein, in any manner except as permitted by the acts of 1896 and 1897. See Taylor *v.* Parker, 235 U. S., 42. The comprehensiveness of the restriction was modified only by the power to lease; and while the allottee could make leases, as provided in these acts, they gave him no power to dispose of his interest in the land subject to the lease, or of any part of it. The rents and royalties were profit issuing out of the land."

A lease would be an alienation of the land. Eldred *vs.* Okmulgee Loan & Trust Company, 22 Okla., 742; 98 Pac., 929.

property in land and the right of their enjoyment; as servitudes; rent charges; the property in the surface as severed from that on the sub-soil, or vice versa; future estates; or particular ones limited in operations; rights of mortgage, pledge or lien, *the equitable ownership as severed from the legal, or vice versa;* and if there be any other real right falling short of the dominion of the soil." Wharton on Conflict of Laws, 3d Edition, Vol. 1, Sec. 286.

"The contract in question in the case at bar is, moreover, a contract relating to real estate, and it is well settled that such contracts are governed by *lex loci rei sitae.*" Roller *v.* Murray (Virginia), 59 S. E., 427.

"Whether a trust interest has been created in land lying in a sister state is to be determined by the laws of that state." Acker *v.* Priest, 92 Iowa, 610, (4th headnote).

These leasehold estates had a local habitation and status in Oklahoma. They were not carried about by the owner in his breast pocket nor did they find their *situs* in the pigeon hole where the paper document which evidenced the character and extent of the estate happened to be deposited. Those carved out of the Fish and Douthat lands were highly developed and extremely valuable and constituted the real prize for which the plaintiff was contending. All the contention and evidence relative to the other transactions was mere manœuvre—strategy—camouflage—by which the plaintiff sought to approach and capture the real object of his attack, to wit, the rich deposits of ore in the Fish and Douthat lands.

2. The Kansas Judgment Provided for the Sale of Property in Another State Through the Instrumentality of Its Own Receiver and for the Distribution of the Proceeds.

The original decree adjudges that "The plaintiff and defendant are equal owners as partners" in said leases (located in the State of Oklahoma), and thereupon "the court further finds, adjudges and decrees that a *receiver* be appointed to collect the royalties accruing from said leases and *to sell said leases*, and that for such purpose the plaintiff and defendant are each to assign *to said receiver* such leases, so that they may be sold *by said receiver*." It therefore appears that a court in the State of Kansas, having first adjudicated conflicting claims to the title of immovable property located in the State of Oklahoma, decrees a sale of such property *under the direction of the Kansas court and by an officer of the Kansas court*.

A receiver is simply an arm of the court. A sale by a receiver is a sale by the court.

> "The rule, that ordinarily a receiver appointed by a court having jurisdiction to make the appointment is an officer of that court, having only such power as the order of the court under the general principles of law and due course of procedure may confer upon him, or such as may be conferred upon him by statute; that his possession is the possession of the court, and property thus placed in his hands is in *custodia legis*, is so fully recognized that citation of authorities in support of the rule seems unnecessary.
>
> "Prominent among the decisions so holding are the cases of Booth *v.* Clark, 17 Howard, 331, and Davis *v.* Gray, 16 Wallace, 217." Texas & Pacif. Ry. Co. *v.* Gay, 86 Texas, 585.

The Supreme Court of the State of Texas, having under consideration precisely the question here involved in the case

of receiver of railroad property (and this decision applies to the rolling-stock as well as the immovable tracks and right of way), disposed of the matter in the following clear-cut language:

> "If the railway corporation could have been compelled to convey its property here situated to the court's receiver * * * this would not remove the difficulty as to jurisdiction, for if the receiver could thus be clothed with title to the property, the disposition of it would rest on the decrees of the court appointing him; for these are the foundation of every judicial sale, or disposition of property through a court when not made on account of an existing right to property *through the person to whom it ought to be conveyed*. Without reference to the decrees of any court, the receiver's possession would still be the possession of the court. Let the matter be obscure as it may in such cases, the court acts directly on the property as well as if it be sold, conveying it if it be conveyed, and possesses it if it be in any manner placed in the hands of its receiver." Texas Pacif. Railroad Co. *v.* Gay, 86 Texas, 596-7.

In Mosby *vs.* Burrough, 56 Texas, 396, a corporation owned property in Tennessee and also in Texas. A receiver was appointed by a court of chancery in Tennessee. The corporation, by direction of the Tennessee court, conveyed its property in Texas *to the receiver*. Thereupon the receiver undertook to claim the property in Texas against attaching creditors. The Supreme Court of Texas "refused to recognize his right or the jurisdiction of the court that appointed him to affect in the manner attempted land situated in this State."

In Morris *vs.* Hand, 70 Texas, 481, it appeared that one Hand was sued by one Fox for the specific performance of a

contract to convey land located in Texas. The parties were residents of the State of New York and the suit was brought there. The New York court ordered Hand to make a conveyance of the property, through its jurisdiction, *in personam*. Before complying with the decree, Hand became insane and one Brown was appointed "committee of his estate," and, in pursuance of the decree ordering him to do so, Brown conveyed the land to Fox. In a controversy between the heirs of Hand and a person holding under the conveyance made by Brown it was held to be "settled without conflict of authority that courts of one country or state have no authority under any circumstances to divest the title to real estate situated in a foreign state or country or to direct the sale of such land to be made by anyone occupying a fiduciary capacity."

In White *vs.* White, 7 Md., 210, a decedent owned land in Maryland and Pennsylvania. All of the heirs lived in Maryland. All agreed that the land should be sold by the court through a master and the proceeds distributed. All the heirs were in court. The bill in chancery asked a decree for the sale of all the land. The court dismissed the bill as to the Pennsylvania land and granted relief as to the Maryland land. All the parties were in agreement and the refusal to decree a sale of the Pennsylvania land seems to have been wholly on the part of the court. The matter was appealed to the Supreme Court and the chancellor said:

> "It would be rather an idle thing in chancery to entertain jurisdiction of a matter not within its reach, and make a decree which it could have no power to enforce, or to compel compliance with. *And the absence of that very power is a good test by which to try the question of jurisdiction.* It would be a solecism to say that the chancellor has jurisdiction to decree *in rem* where the thing against which the decree goes and is alone the subject of, and to be

operated upon by it, is beyond the territorial jurisdiction of the chancery court, and not subject to its authority, and the decree, if passed, would be nugatory for the want of power, or jurisdiction to give it effect. The chancery can have no jurisdiction where it gives no relief. Now what jurisdiction has the chancery court of Maryland over lands lying in a foreign country, or in another State? And having no jurisdiction of lands so situated, what authority has it to decree a sale of them and *impart to its trustee* authority to go into such State or foreign country, to carry its decree into effect, by making sale of them. * * * But in this case, the bill seeks to sell land in Pennsylvania, not within the jurisdiction of the court of chancery of Maryland and the decree if made would not be *in personam* but for the sale of land *through the instrument of a trustee* and could not be enforced by any process of this court."

To the same effect Wilson *vs.* Braden, 48 W. Va. Rep., 199.

The Supreme Court of Kansas affirmed the original decree of the District Court of Cherokee County, including the provision which it contained for the appointment of a receiver of that court to take possession of, administer, and sell the real estate described in the petition and located in the sister State of Oklahoma.

Upon the second motion for a rehearing, however, the court modified this decree by directing that the defendant Smith be required to execute a *conveyance* of the property in Oklahoma to the alleged firm of Apple & Smith.

3. *The Kansas Court Had no Jurisdiction of the Subject-matter of the Suit.*

A clear vision of the powers and jurisdiction of the Kansas court arises from the consideration of a few elementary

and undisputable principles relative to the limitations upon the judicial powers and activities of the several States. The geographical boundaries of a State limit the exercise of its judicial powers as rigidly as its executive and legislative powers. The decree of a court has no greater territorial application than an act of the Legislature. It matters not whether the decree of a court be founded upon principles of law or equity—in either case its authority and effectiveness ceases at the State line. A Kansas sheriff cannot levy an execution of a Kansas court on property in Oklahoma, nor can an Oklahoma sheriff enforce in Oklahoma an execution issued out of a Kansas court. The judgment or decree of a Kansas court cannot be filed with the recording officers of another State so as to constitute a lien on property in such other State. In brief, the judgment and decrees of the court of one State are as if they did not exist after its geographical boundaries are passed—except in so far as the provisions of the Constitution of the United States, which applies to *all the States*, has modified the situation by that provision which declares that full faith and credit shall be given to the judgments and decrees of the courts of a State in every other State. But an unbroken line of judicial interpretation has established the rule that the full-faith-and-credit provision applies only to judgments *in personam*. The orderly administration of justice forbids that the courts of one State should adjudicate *titles* to property in another State. If it were not so, inextricable confusion would arise. Hence the rule that all actions affecting land or immovable property are *local* and must be brought in the State of the *situs* of the property. Accordingly it is held that full-faith-and-credit provision of the Federal Constitution does not apply to judgments or decrees affecting title to property, movable or immovable, located in another State:

> "The provision in the statutes of the United States which provides that full faith and credit shall be given in each State to the judicial proceedings of

every other State, applies only to personal obligations, duties, contracts and liabilities other than those which affect interests in real estate." Courtney *vs.* Henry, 114 Ill. App., 635.

To the same effect:

City Ins. Co. *vs.* Commercial Bank, 68 Ill., 355.
Vol. 1, Pomeroy's Equity Jurisp., 14th Ed., Sec. 298, p. 583 *et seq.*
Lamkin *vs.* Lovell, 176 Ala., 334.
Clam *vs.* Givens Admr., 106 Va., 145.
Fall *vs.* Eastin, 215 U. S., 1.

Upon the facts as above stated, the suit was clearly of a *local* and not of a transitory nature. The real question involved in the suit was whether the leasehold estates located in the State of Oklahoma, standing in the name of the defendant Smith, held in his possession, and claimed by him to be his private, individual property, were in truth and in fact his individual property or the property of the alleged firm of Apple & Smith. All inquiry in the case—all evidence—all the circumstances converge upon this one point, to wit, Was this title vested in and owned by the individual Wesley M. Smith or the firm of Apple & Smith?

"It is to the principal question involved in any case that the court looks to determine whether the action is local or transitory in its nature; and if such question relates to land, the action is local and must be maintained in the place where the land is located." 28 Appeal Cases D. C. 288; Ellinwood *vs.* Marietta Chair Co., 158 U. S., 105.

"The line between actions termed local and transitory, in some of the decided cases, becomes shadowy; but in no case can a suit the purpose of which is to subject certain property, whether real or personal, to

payment of a debt, or to have it placed in possession of and under control of a court for any purpose of administration, be termed other than a local action. Texas & Pacific Ry. Co. *vs.* Gay, 86 Texas, 594.

4. *Jurisdiction to Make an Accounting.*

We come now to the very interesting and difficult question of the effect of a judgment *in personam* in cases of this character.

That courts of equity in one State, having jurisdiction over the *person* of a defendant, may order him to convey land standing in his name in another State to the person decreed to be the equitable owner thereof and to enforce such a decree by constraint of the person of the defendant seems to be established by the authorities.

Such a conveyance, although procured by a sort of judicial duress, is treated as valid by the foreign State.

It will be noted that this leaves the courts of the State in which the property is located untrammeled in the exercise of its jurisdiction over the property. Creditors, lienholders, owners, and all claimants residing in the State of the *situs* of the property are not affected otherwise than by an ordinary conveyance from one individual to another. But no State will permit the courts of another State to *administer* property having a *situs* within its boundaries. No courts, except those within whose jurisdiction the property to be affected is located, have the power to bring before them all rival claimants and to determine all conflicting claims growing out of the ownership, possession, or use of such property. The *lex loci rei sitæ* only can be invoked to determine the rights and liabilities of creditors, lienholders, claimants, and owners of such property.

It follows that where, in proceedings *in personam*, a court in one State decrees the conveyance of property located in

another State, compliance with the decree is a condition precedent to the exercise of any further jurisdiction, in so far as the property or any claims or liabilities connected with the use, occupation, or ownership thereof is concerned. The title to the property must first be determined. As between the parties, this may be considered as accomplished when the conveyance has been executed in obedience to the order of the court. Where, however, for any reason the proceedings do not result in the execution of a conveyance, which alone can affect the transfer of title to property located in a foreign State, the litigation is at an end.

In the case of Williams *v.* Nichol, 47 Ark., 254; 1 S. W. Reporter, 243, the court said:

> "The first question presented for consideration is, did the court below have jurisdiction of the subject of this action? *It is a well settled principle of law that the law of the situs governs exclusively in regard to all rights, interests, and titles in and to immovable property.* It governs as to capacity or incapacity of a testator, and the extent of his power to dispose of it, and the descent and heirship thereof, and the manner in which it shall be disposed of for the payment of debts. *No court, State or Federal, can reach or confer title, nor sell, under decree, lands situate in a State in which it does not sit. Every attempt of a court to found jurisdiction over such lands must, from the very nature of the case, be utterly nugatory.* In regard to legacies charged upon lands, the court of equity in the State in which the land lies have exclusive jurisdiction. Clopton *v.* Booker, 27 Ark., 482; Story, Eq. Jour., Sec. 602; Story, Contl. Laws, Secs. 424, 463, 474, 483, 550, 555."

In the case of Froelich *vs.* Swafford, 35 S. D., 35; 150 N W., 476, at page 478; 150 N. W. Reporter, the court said:

"It being a fundamental truth that a decree from the court of one State cannot, in itself, affect real property situate in another State, and that, for that reason, no decree rendered in such action can bring effective relief, except when, through such decree, the party against whom it is directed is forced to execute such instrument as may be necessary to protect the other party's rights (notes to Proctor *v.* Proctor), *after a decree is rendered in such an action, if the party against whom it is rendered dies or leaves the State wherein such decree was rendered without having complied with the terms thereof, the prevailing party has, in effect, achieved nothing*—he cannot record his decree in the State wherein the land is situate; he cannot sue upon it in the courts of such State; in fact, he stands where he did before suit was brought."

The Supreme Court of the United States, in the case of Fall *vs.* Eastin, 215 U. S., p. 1, in the syllabus, declares the law as follows:

"While a court of equity acting upon the person of the defendant may decree a conveyance of land in another jurisdiction and enforce the execution of the decree by process against the defendant, neither the decree, nor any conveyance under it except by the party in whom title is vested, is of any efficacy beyond the jurisdiction of the court. Corbett *v.* Nutt, 10 Wall., 464.

"A court not having jurisdiction of the *res* cannot affect it by its decree nor by a deed made by a master in accordance with the decree."

In the case of Harris *vs.* Pulliam, 84 Ill., 20, it is said:

"A court whose decree will leave a party in peril of being subject to another may be directly opposite

decree or judgment in regard to the same property in a different jurisdiction is not in a condition to do complete justice in the case and should, therefore, decline to entertain jurisdiction."

To the same effect

Oakman *vs.* Small, 282 Ill., 360-364.

"The course pursued may lead to opposing decrees in different States and this fact is of itself a good ground for declining to entertain jurisdiction."

Davis *vs.* Cornue, 151 N. Y., 172 at p. 182.

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